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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,941	07/11/2003	Thomas J. Gretz	1633(Arl)	3975
30010	7590	06/11/2004	EXAMINER	
AUZVILLE JACKSON, JR. 8652 RIO GRANDE ROAD RICHMOND, VA 23229			SCHULTERBRANDT, KOFI A	
			ART UNIT	PAPER NUMBER
			3632	
DATE MAILED: 06/11/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/617,941

Applicant(s)

GRETZ, THOMAS J.

Examiner

Kofi A. Schullerbrandt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 is/are allowed.
- 6) ☒ Claim(s) 1-15, 17 and 18 is/are rejected.
- 7) ☒ Claim(s) 16 and 19 is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 071103.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: See Continuation Sheet.

### **DETAILED ACTION**

This first Office Action is in response to Applicant's originally filed Application received in the Office on July 11, 2003.

#### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on July 11, 2003 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been by the examiner.

#### ***Election/Restrictions***

This application contains claims directed to the following patentably distinct species of the claimed invention:

Species 1,	Figure 1;	(planar blank)
Species 2,	Figures 2-6;	(support on both sides of blank)
Species 3,	Figures 7-9.	(support on one side)

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims

readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Auzville Jackson Jr. on May 18, 2004 a provisional election was made without traverse to prosecute the invention of Species 2, Figures 2-6, claims 1-20. Affirmation of this election must be made by applicant in replying to this Office action. No claims have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the three ears extending from each side of the head in claim 4 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3, 4 and 7-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear how Applicant's head (38) and base (22) extend at 90 degrees away from each other. **No art has been applied to claims 3 or 4.**

Regarding claim 4, it is unclear how many ears extend from how many sides of the rectangular head. Do three ears extend from each side of the head.

Regarding claims 7-13, Claim 1 recites a first holding member, an arcuate cable holder "on" said first holding member and a deformable member "on" said first holding member. It is unclear whether the word "on" in the above phrases means that the first

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holding member is made up of the arcuate cable holding member and the deformable member or whether the first holding member is a separate element. Furthermore, the specification and reference numbers in the drawings do not clearly distinguish where one part begins and another ends. For example it is unclear where the arcuate cable holder begins and the deformable member ends. Without more specific disclosure claims 7-13 cannot be properly examined.

For example, claim 7 recites an arcuate holder that "includes therein between 260 and 280 degrees of arc". It is unclear which portion of the invention is the arcuate cable holder and therefore it is unclear whether claim 7 is patentable over the prior art. Furthermore, claim 8 recites a deformable member that "extends from said first holding member at between 155 and 165 degrees of said arc". It is unclear what this language means because no frame of reference is described in the specification for the claimed angles and degrees. **No art has been applied to claims 8-13.**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 6, 14, 15, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Behringer (1,472,955). Behringer teaches each feature of the claimed invention as shown in the attached marked-up copy of Behringer's Figures 1-4.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Behringer (1,472,955). Behringer teaches, substantially, each feature of the claimed invention. Behringer does not teach a cable holder with between 260 and 280 degrees of arc. It would have however been obvious to one of ordinary skill in the art at the time of invention to have modified the curvature of Behinger's holding member to have additional arc including 260 degrees.in order to more securely accommodate a smaller pipe by bending Behinger's holding member around the smaller pipe.

***Allowable Subject Matter***

Claim 20 is allowed over the prior art of reference.

Claims 16 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Reasons for Indicating Allowable Matter***

The following is a statement of reasons for the indication of allowable subject matter: Regarding claim 16, the prior art of record does not teach, in combination with the other features of claim 16, a tab extending from one side of the v-shaped end. Regarding claim 19 the prior art of record does not teach in combination with the other features of claim 19, the claimed holding member sets extending from a first side of the base and four of said sets extending from a second side of the base. Regarding claim 20, the prior art of record does not teach, in combination with the other features of claim 20, providing a slot in the first holding member, inserting a screw driver or similar leverage tool into the slot and bending the first holding member until the deformable member secures the cable against the base.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kofi A. Schulterbrandt whose telephone number is (703) 306-0096. The examiner can normally be reached on Monday - Friday, 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kofi Schulterbrandt  
May 28, 2004



LESLIE A. BRAUN  
SUPERVISORY PATENT EXAMINER

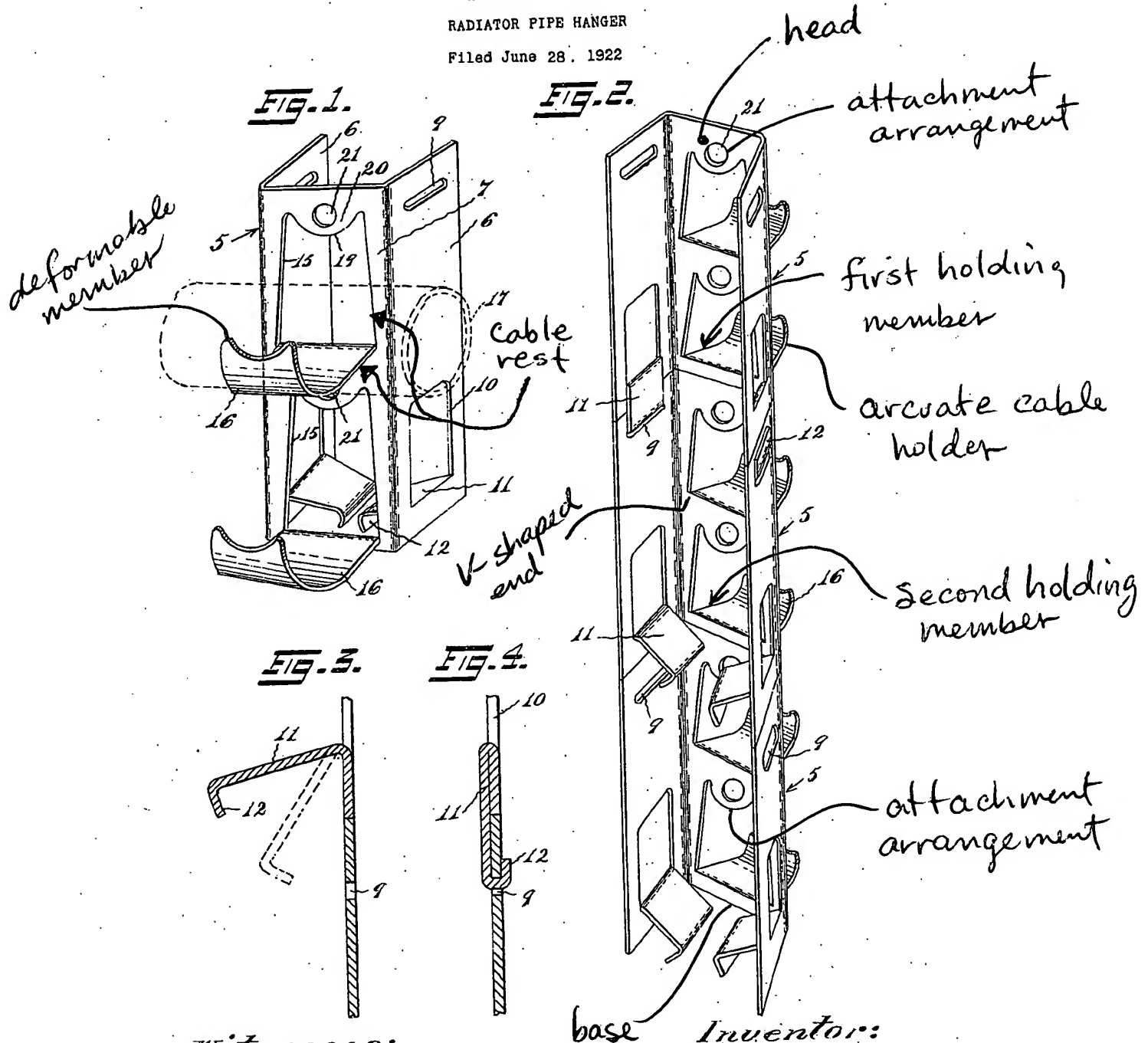
Continuation of Attachment(s) 6). Other: Two marked up copies of U.S. Patent No. 1,472,955 (Figures 1-4) .

SCAN WITH OFFICE ACTION

Nov. 6, 1923.

E. BEHRINGER  
RADIATOR PIPE HANGER  
Filed June 28, 1922

1,472,955



Witnesses:  
H. D. Penner

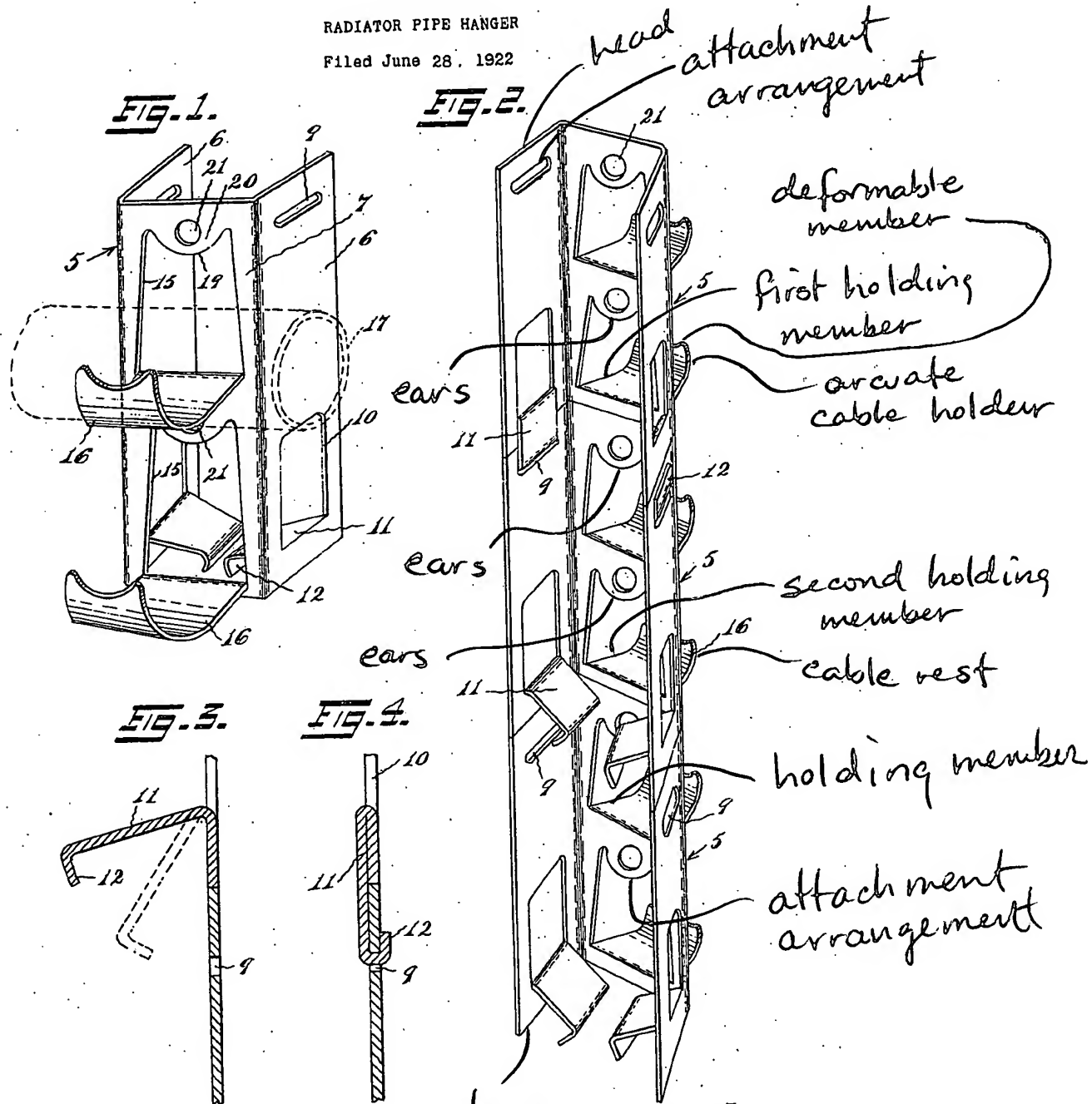
Inventor:  
Emil Behringer,  
By his Att'y, F. W. Richards,

# CLAIM 4

Nov. 6, 1923.

E. BEHRINGER  
RADIATOR PIPE HANGER  
Filed June 28, 1922

1,472,955



Witnesses:

*H. B. Badian*  
*H. D. Penner*

base Inventor:

*Emil Behringer,*  
*By his Att'y, F. W. Richards,*